

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC., et al.,

Defendants.

Civil Action No. 6:12-CV-499-LED

JURY TRIAL DEMANDED

**PLAINTIFF’S REPLY IN RESPONSE TO
DEFENDANT BMI’S COUNTERCLAIMS**

Plaintiff Blue Spike, LLC files this Reply to the Counterclaims of Broadcast Music, Inc. (“BMI” or “Defendant”) (Dkt. No. 200) as follows. All allegations not expressly admitted or responded to by Plaintiff are denied.

PARTIES

83. Plaintiff admits the allegations of Paragraph 83, upon information and belief.

84. Plaintiff admits the allegations of Paragraph 84.

JURISDICTION AND VENUE

85. Plaintiff admits the allegations of Paragraph 85.

86. Plaintiff admits the allegations of Paragraph 86.

87. Plaintiff admits the allegations of Paragraph 87.

88. Plaintiff admits the allegations of Paragraph 88.

89. Plaintiff admits the allegations of Paragraph 89.

FIRST COUNTERCLAIM: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '472 PATENT

90. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 89 above. Plaintiff denies the remaining allegations of Paragraph 90

on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

91. To the extent that the text of Paragraph 91 contains allegations and not a prayer for relief, Plaintiff denies them.

**SECOND COUNTERCLAIM: DECLARATORY JUDGMENT OF
INVALIDITY OF THE '472 PATENT**

92. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 91 above. Plaintiff denies the remaining allegations of Paragraph 92 on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

93. To the extent that the text of Paragraph 93 contains allegations and not a prayer for relief, Plaintiff denies them.

**THIRD COUNTERCLAIM: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '700 PATENT**

94. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 93 above. Plaintiff denies the remaining allegations of Paragraph 94 on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

95. To the extent that the text of Paragraph 95 contains allegations and not a prayer for relief, Plaintiff denies them.

**FOURTH COUNTERCLAIM: DECLARATORY JUDGMENT OF
INVALIDITY OF THE '700 PATENT**

96. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 95 above. Plaintiff denies the remaining allegations of Paragraph 96

on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

97. Plaintiff denies the allegations of Paragraph 97.

98. To the extent that the text of Paragraph 98 contains allegations and not a prayer for relief, Plaintiff denies them.

**FIFTH COUNTERCLAIM: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '494 PATENT**

99. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 98 above. Plaintiff denies the remaining allegations of Paragraph 99 on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

100. To the extent that the text of Paragraph 100 contains allegations and not a prayer for relief, Plaintiff denies them.

**SIXTH COUNTERCLAIM: DECLARATORY JUDGMENT OF
INVALIDITY OF THE '494 PATENT**

101. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 100 above. Plaintiff denies the remaining allegations of Paragraph 101 on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

102. Plaintiff denies the allegations of Paragraph 102.

103. To the extent that the text of Paragraph 103 contains allegations and not a prayer for relief, Plaintiff denies them.

**SEVENTH COUNTERCLAIM: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '175 PATENT**

104. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 103 above. Plaintiff denies the remaining allegations of Paragraph 104 on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

105. To the extent that the text of Paragraph 105 contains allegations and not a prayer for relief, Plaintiff denies them.

**EIGHTH COUNTERCLAIM: DECLARATORY JUDGMENT OF
INVALIDITY OF THE '175 PATENT**

106. Plaintiff repeats and incorporates by reference its responses to the allegations contained in Paragraphs 83 through 105 above. Plaintiff denies the remaining allegations of Paragraph 106 on the basis that Defendant's incorporation of its Answer and Affirmative Defenses into its Counterclaims is nonsensical.

107. Plaintiff denies the allegations of Paragraph 107.

108. To the extent that the text of Paragraph 108 contains allegations and not a prayer for relief, Plaintiff denies them.

PRAYER FOR RELIEF

Plaintiff denies that Defendant is entitled to any of the relief it requests.

PLAINTIFF'S PRAYER FOR RELIEF

In addition to the relief requested in Plaintiff's Original Complaint, Plaintiff respectfully requests a judgment against Defendant as follows:

- (a) That Defendant take nothing by its Counterclaims;

(b) That the Court award Plaintiff its costs and attorneys' fees incurred in defending against these Counterclaims; and

(c) Any and all further relief for the Plaintiff as the Court may deem just and proper.

Dated: December 11, 2012

Respectfully submitted,

/s/ Randall T. Garteiser
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Counsel for Blue Spike, LLC

CERTIFICATE OF SERVICE

I, Randall T. Garteiser, am the ECF User whose ID and password are being used to file this document. I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this day. Pursuant to Federal Rule of Civil Procedure 5, today this document was served via U.S. Mail and electronic means to counsel for Defendant that are not receiving this document via CM/ECF.

/s/ Randall T. Garteiser

Randall T. Garteiser